From: DJMaytag
To: Microsoft ATR
Date: 1/28/02 1:13pm
Subject: Microsoft Settlement

[Text body exceeds maximum size of message body (8192 bytes). It has been converted to attachment.]

I have to take objection to this:

"59. The primary channel through which Microsoft distributes its operating systems is preinstallation on new PCs by OEMs. Because a PC can perform virtually no useful tasks without an operating system, OEMs consider it a commercial necessity to preinstall an operating system on nearly all of the PCs they sell. And because there is no viable competitive alternative to the Windows operating system for Intel-based computers, OEMs consider it a commercial necessity to preinstall Windows on nearly all of their PCs. Both OEMs and Microsoft recognize that OEMs have no commercially viable substitute for Windows, and that they cannot preinstall Windows on their PCs without a license from Microsoft. For example:"

Look at today's PCs and try to buy a PC from Dell, HP with both Windows and Linux factory installed. You can't. You can get Linux in some places, mostly WinMe, but not both. The reason is MS plays a clever game. To use a boot loader, if you're a Windows licensee, you must use the MS loader. Then, if you read the MS Boot Manager license, you can only use it to load MS OSs, DOS, WindowsXX, Windows 2000. Otherwise you lose your Windows license. This explains why you cannot buy a dual boot Windows and a competing OS loaded at the factory. If and when the DOJ wins their case for good and winning means Dell or Compaq can install competing OS at the factory, MS will have to compete on merits. Today, they abuse their monopoly.

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See http://www.befaqs.com/mirror/classic-be/developers/bmessage/issue01.html for the full article:

Manufacturing Consent
by Jean-Louis Gass,e

Perhaps I should call this column "Manufacturing Public Opinion," rather than "Manufacturing Consent." The idea for it occurred to me as I read the opinion "polls" taken right after last Friday's announcement of the DOJ's proposed remedies in the MS anti-trust trial. The pollsters found that the majority (more than 60%) of the American public is opposed to the remedies proposed by Joel Klein's team at the DOJ, working with the attorneys general of 19 states. With more than 20% undecided, that leaves relatively few people supporting the DOJ's position. Vox populi, vox dei? Is the DOJ, which is supposed to fight for the people, out of touch with the public good?

That's what the pollster-geist behind the probe would like us to believe. Far from me to suggest that this poll is unscientific. Au contraire. It represents the real science of manufacturing opinion, preferably by creating an avalanche effect. If most people are against breaking up Microsoft, it must be bad; therefore, I must join them, and the next poll might show even stronger disagreement with the DOJ. What's bad for Microsoft is bad for America.

Let's go back to December 1982. You poll consumers for what they want in a personal computers. What do you hear? I want a better, faster, cheaper Apple II, or ///, or PC, or CPM system (yes, these were still around at that time). A month later, you give public demonstrations of the Lisa. The same people now tell you that's what they want. B-b-b-b-but, you stutter, that's not what you said last month. Yes, no, I didn't know this existed.

In other words, the consumer had no words, no concept, to deal with what was unthinkable at the time but which suddenly became describable-and attractive-once seen and touched: a mouse, overlapping windows, a bitmapped screen, pull-down menus. I can only think and discuss what I have reference points for and, in general, I tend to describe the future in today's vocabulary.

In this case, most PC users have only been exposed to Microsoft's lineage of operating systems. As a result, there are few reference points for thinking of life with more than one breed of operating system and applications.

Microsoft made sure that an alternative OS such as Be's, Linux, or FreeBSD couldn't be loaded next to Windows by PC OEMs. As a result, people have no data other than the Microsoft experience. They're told that some of the remedies would make the Windows system riskier and that applications might not work as well. We have something that works, the jack-booted thugs at the Justice Department want to make it less than what it is today, so why should I be in favor of breaking up Microsoft?

Setting aside the caricature, the point remains: Microsoft's monopoly practices are the very reason why we haven't experienced what a truly competitive situation might be like. This is why the poll is so revealing of a certain kind of science in manipulating the political situation around the suit.

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http://befaqs.dyndns.org:8042/mirror/be.com/www.be.com/aboutbe/benewsletter/
volume_III/Issue8.html#Gassee

A Crack in the Wall
By Jean-Louis Gass,e

You're the CEO of a PC OEM, delivering some great news to Wall Street: "In an effort to offer greater variety and performance to the customer, our factory now installs three operating systems on the hard disk -- Windows, Linux, and the BeOS. The reaction has been spectacular. Customers love having a choice of OS, and the press -- from John Dvorak in PC Magazine to John Markoff in the New York Times to Walt Mossberg in the Wall Street Journal -- has heralded us for our bold move. This is a great step forward for the consumer and for the industry. Oh, and by the way, we lost $50 million since we no longer qualify for Windows rebates. But it's a sacrifice for the common good."

You're now the ex-CEO of a PC OEM.

We know that the Windows rebate scheme exists -- but what *is* it, exactly? And why are so many OEMs afraid of losing it? Windows pricing practices are closely guarded secrets, so we don't know exactly how the rebate is structured, but we can assume that it works something like this: The total cost of a Windows license consists of a base price offset by a rebate. The base price is set; the rebate is flexible, and contingent on the "dedication" of the licensee. That is, the more you "advertise" the product -- through prominent positioning, expanded shelf space, and so on -- the greater your rebate. This quid pro quo rebate looks innocent enough, and can be a useful tool in a competitive market.

But when you're running a monopoly -- and when it comes to out-of-the-box, consumer-grade PC clones, Microsoft *is* a monopoly -- "prominent positioning" and "expanded shelf space" have little meaning. Microsoft has no interest in getting "more" footage on the OS shelf, because they've already got it all. What interests them -- the only useful advantage they can "buy" (to be kind) with their rebate -- is to ensure that no one else will get any.

So how is "dedication" measured? A real-life example: We've been working with a PC OEM that graciously -- and bravely -- decided to load the BeOS on certain configurations in its product line. However, there's a twist in their definition of "loading." When the customer takes the machine home and starts it up for the first time, the Microsoft boot manager appears -- but the BeOS is nowhere in sight. It seems the OEM interpreted Microsoft's licensing provisions to mean that the boot manager could not be modified to display non-Microsoft systems. Furthermore, the icon for the BeOS launcher -- a program that lets the user shut down Windows and launch the BeOS -- doesn't appear on the Windows desktop; again, the license agreement prohibits the display of "unapproved" icons. To boot the "loaded" BeOS, the customer must read the documentation, fish a floppy from the box and finish the installation. Clever.

One suspects that Linux suffers from the same fealty to Microsoft's licensing strictures. Linux is the culmination of 30 years of development by the Unix community. Surely an OEM can't complain about Linux's quality or its price: It's good, and it's free. If Microsoft licensees are as free to choose as Microsoft claims they are, why isn't Linux factory installed on *any* PC? If you randomly purchase 1,000 PC clones, how many have any OS other than Windows loaded at the factory? Zero.

But what about all these announcements from companies such as IBM, Dell, and others? A few URLs are supplied here for your convenience:

<http://www.dell.com/products/workstat/ISV/linux.htm>
<http://www.compaq.com/isp/news_events/index.html>
<http://www.compaq.com/newsroom/pr/1998/wa111298a.html>
<http://www.hp.com/pressrel/jan99/27jan99.htm>
<http://www.hp.com/pressrel/jan99/27jan99b.htm>
<http://www.software.ibm.com/data/db2/linux/>

If you parse the statements, Linux is offered and supported on servers, not on PCs. Another IBM story is that installation is to be performed by the reseller on some PCs or laptops, not by IBM at the factory.
As an industry insider gently explained to me, Microsoft abides by a very simple principle: No cracks in the wall. Otherwise, water will seep in and sooner or later the masonry will crumble.

Guarding against even the smallest crack is important to Microsoft, because it prevents a competitor from taking advantage of a phenomenon that economists call the "network effect." The "network effect" manifests itself as an exponential increase in the value of a product or service when more people use it. Applied to a computer operating system, the effect works like this: As more people install and use an OS, the demand for applications increases. Developers respond to the demand, which attracts the attention of OEMs and resellers, who promote the OS in order to sell the apps, which attracts more customers... The key to all this is distribution and visibility -- in other words, "shelf space."

Bill Gates understands the network effect well -- he once quoted it to me, chapter and verse. In the Fall of 1983, when I was still running Apple France, I met with Bill in Paris and we got into a conversation regarding the market share limitations of DOS. No problem, he said, with the wide distribution we enjoy, we'll get the attention of third parties, and the marketplace will fix these shortcomings.

This puts statements by senior Microsoft executive Paul Maritz in perspective. In reaction to my claim that Be wants to co-exist with Microsoft, Mr. Maritz said (as quoted by Joseph Nocera in Fortune Magazine):

  "[Gassee is] articulating his strategy for entry into the
  operating system marketplace. But on the other hand, I
  know that Be has built a full-featured operating system,
  so what I believe he's doing here is outlining his
  strategy about how he will initially co-exist with Windows
  and, over time, attract more applications to his
  platform."

Mr. Nocera interpreted Mr. Maritz's interpretation thus:
  "In other words, Gassee's spiel is little more than a
  trick intended to lull Microsoft. But Microsoft isn't so
  easily fooled! Microsoft will never ignore a potential
  threat to its Windows fortress, no matter how slight. The
  software giant may be in the middle of an antitrust trial,
  but -- as Andy Grove says -- only the paranoid survive..."

[The entire article, part of a court house diary, can be found at <http://www.pathfinder.com/fortune/1999/03/01/mic3.html>.]
Industry sages such as T.J. Rodgers, the CEO of Cypress Semiconductors, as well as venture capitalists aligned with Microsoft, criticize the Department

of Justice's intervention in the new Pax Romana we're supposed to enjoy under Microsoft's tutelage. Don't compete in court, compete in the marketplace, they say.

I'm a free marketer myself; I left a statist environment for the level playing field created by the rule of law in this, my adopted country. A free market is *exactly* what we want. One where a PC OEM isn't threatened by financial death for daring to offer operating systems that compete with the Windows monopoly.

We started with a thought experiment. We end with a real-life offer for any PC OEM that's willing to challenge the monopoly: Load the BeOS on the hard disk so the user can see it when the computer is first booted, and the license is free. Help us put a crack in the wall.

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http://befaqs.dyndns.org:8042/mirror/be.com/www.be.com/aboutbe/benewsletter/
volume_III/Issue9.html#Gassee

Is the Customer King?
By Jean-Louis Gass,e

One would hope to answer this question in the affirmative, but before I elaborate, some follow-up to last week's column, "A Crack In The Wall," along with our thanks.

Our offer of free copies of the BeOS to OEMs willing to load our OS "at the factory," on the hard disk of PCs they sell, got a tremendous response. We appreciate the interest in our product and we intend to do our best to honor the hospitality extended to us. Watch this space or, more generally, www.be.com, for more details. For a number of contractual reasons, this offer applies only in the US and Canada, not to other countries in the Americas or in Asia. For Europe, please contact our VP Europe, Jean Calmon, jcalmon@beeurope.com, for country-by- country details.

As we collect data from the flow of responses, an interesting but not unexpected picture emerges. The OEMs expressing interest are the ones who cannot realistically be "fined" by Microsoft -- that is, lose their Windows rebate. If you pay the maximum OEM price for Windows, or close to it, you won't be afraid to load Linux or the BeOS on your customers' hard drives, especially if you don't have to account to Wall Street for your actions.

If, on the other hand, your exposure is measured in millions of dollars per quarter, and you are the CEO of a publicly traded company, you'll load Windows and nothing but Windows on the PCs you sell. More precisely, you might load Linux as the OS engine on hardware other than PC servers. In any event, this represents only a preliminary look at the returns -- it's too early to draw definite conclusions.

Now, let's turn to the customer in the title of this column. We hear that the Windows monopoly is good for customers -- it's a standard, there's no confusion, users can rely on a trusted foundation for their work, and so on. But how can this be if there are so many obstacles placed in the way of a customer's even seeing that (s)he has some (limited) choices?

I'll take one example of what I mean by choices. One overseas OEM announced with great fanfare that it would offer some configurations in its PC line with a dual-boot arrangement: Windows 98 for mainstream applications and the BeOS for its natural media uses. Great -- exactly what we wanted -- the specialized media OS peacefully coexisting with the mainstream platform.

Well, not exactly. If you take the machine out of the box and boot it, the BeOS is nowhere to be seen -- the computer boots only Windows 98. If you read the documentation carefully, you'll find out how to "unhide" the BeOS. Then, through a complicated sequence, you'll finally get to the dual-boot situation. Should the OEM be criticized for this state of affairs? Again, not

exactly. It appears that the fear of losing Windows rebates intervened to prevent the customer from being offered a genuine dual-boot system. In fact, as we verified for ourselves, the steps the customer must perform are so complicated that it's much easier just to do the simple partition and BeOS installation possible with our retail product, complete with a BeOS Launcher icon on the Windows desktop.

Wouldn't one think that Microsoft behaves, in effect, as if the PC belonged to it, rather than to the OEM or to the customer? It's is hard to see how the customer and, more generally, the industry, benefit if one company decides what's good for all, and what the customer should see or not see.

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http://befaqs.dyndns.org:8042/mirror/be.com/www.be.com/aboutbe/benewsletter/
volume_III/Issue22.html#Gassee

A Crack in the Wall: Part II
By Jean-Louis Gass,e

Some time ago, I wrote a semi-fictional column regarding the plight of the CEO of a PC clone company ("A Crack in the Wall" <http://www.be.com/aboutbe/thebenewsletter/volume_III/Issue8.html>). At a quarterly business review for Wall Street analysts, the CEO extolled his vision: Giving buyers more OS choices was A Good Thing. Everything went well -- customers loved having Linux and the BeOS installed on their system at the factory, next to the classic Windows. The out-of-the-box experience was great, the options at boot time were easily understood and, since customers could delete the system(s) they didn't want to keep, this was the real thing, freedom of choice -- without waste. The PC magazines loved the move, we reaped all the Best Of... awards and generated good will and oodles of free publicity.

Ah, another thing, the CEO continued. The company lost $50 million dollars this quarter because Microsoft fined us for offering other operating systems. Their contract with us gives them the right to increase the price we effectively pay for Windows if we offer other operating systems. Microsoft even invoked an obscure -- and confidential -- clause in their licensing agreement and grumbled that we had no right to use their boot manager, or any DOS code, to load other operating systems. It's OK for the customer to install a boot manager him/herself, but you, the PC OEM shouldn't. As a result, they claim we shouldn't offer the of out-of-the-box experience I mentioned earlier. Some customer assembly is required.

At this stage, the CEO has lost his audience -- and his job.

As I said at the beginning, this is a concoction. But testimony is sometimes tastier than what amateur columnists can dream up. What we have before us is a deposition by Garry Norris, an IBM executive and a government witness in the antitrust suit against Microsoft. In his testimony, Garry Norris describes how Microsoft quintupled the Windows royalties it demanded from IBM, to $220 million. There is some dispute about the exact numbers, but you get the idea.

How the media treated this is noteworthy. One title read "IBM breaks ranks..." This appears to reflect a commonly held belief: PC OEMs didn't want to break a code of silence for fear of some kind of retaliation. In private, PC OEMs "share their thoughts" quite freely. They appear to resent being treated as vassals by Microsoft in its use or abuse of its desktop OS monopoly. In public, they have to take care of business. Who can blame them? Business is competitive enough as it is. Why risk a falling out with Microsoft that will result in a competitive disadvantage? As far as we know, there is no Antitrust Witness Protection Program, so the tension between self -interest and the calculus of common good is understandable.

This leads to another thought: Why IBM? Is this an example of the altruism of an enlightened corporation, or have they decided they no longer have anything to lose in the PC business, as various rumors have intimated in the past few

months? There has been speculation -- and denials -- that IBM wanted out of
the PC business, because it has become too commoditized and it's been
impossible for them to make a profit. Some have even read something of that
nature in their multi-year, multibillion dollar agreement with Dell.

Whatever IBM's reason for breaking the code of silence, their testimony could
make this phase of the trial as surprise-filled as the first

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 Three things you need to remember about me:
  1. Alright, alright... I'm a DJ,
  2. I changed my mind, OK? (see http://www.djmaytag.com/name/),
  3. In any case, I'm STILL not a washer and dryer repairman, either.
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 http://www.djmaytag.com/   <- Home page
 http://www.djmaytag.com/303/ <- The TB-303 re-release page

 Fortune cookie:
Time is nature's way of making sure that everything doesn't happen at
once.